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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,299	01/30/2002	Thomas Newmark	9510.101F	7346

7590 12/19/2003  
NATH & ASSOCIATES, PLLC  
1030 15TH STREET, N.W., 6TH FLOOR  
WASHINGTON, DC 20005

EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/058,299

Applicant(s)

NEWMARK ET AL.

Examiner

Shaojia A Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-12.Claim(s) withdrawn from consideration: 13-24.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

12/16/03

***Advisory Action***

This Office Action is a response to Applicant's response after FINAL filed on November 18, 2003.

Applicant's declaration under 37 CFR 1.132 of Dr. Karl-Werner Quirin (not inventor), submitted after FINAL November 18, 2003, will not be entered and considered since this declaration is not considered filed timely. See MPEP 716.01.

5. The rejection of Claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Majeed et al. (5,861,415) for reasons of record stated in the Final Office Action dated June 18, 2003, maintained.

The rejection of Claim 5 under 35 U.S.C. 103(a) as being unpatentable over Majeed et al. (5,861,415) and "Antioxidant Effects of Tea"(page 249-254) for reasons of record stated in the Final Office Action dated June 18, 2003, maintained.

The rejection of Claims 1-12 under 35 U.S.C. 103(a) as being unpatentable over Oppenheim et al. (WO 99/20289) and "Antioxidant Effects of Tea"(page 249-254) or Applicant's admission regarding the prior art in the specification (see page 5 lines 4-6) for reasons of record stated in the Final Office Action dated June 18, 2003, maintained.

The rejection of Claims 1-4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,391,364 for reasons of record stated in the Final Office Action dated June 18, 2003, maintained.

The rejection of Claims 1-4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,264,995 for reasons of record stated in the Final Office Action dated June 18, 2003, maintained.

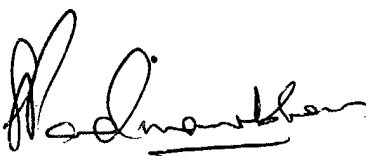
Applicant's remarks filed November 18, 2003 with respect to all rejections in the Final Office Action dated June 18, 2003 have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. Anna Jiang, Ph.D.  
Patent Examiner, AU 1617  
December 16, 2003

  
**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

12/16/03